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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,250	03/16/2001	Paul J. Cahill	7613-80971	8270

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EXAMINER

SHORT, PATRICIA A

ART UNIT	PAPER NUMBER
1712	S

DATE MAILED: 08/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/811250	Cahill
Examiner	Group Art Unit	
Short	1712	

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

Responsive to communication(s) filed on July 2, 2002

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-5, 9-12, 18-20 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-5, 9-12, 18-20 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement

Application Papers

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All Some* None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. _____.

Copies of the certified copies of the priority documents have been received
in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 9, 10, 18 and 20 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Parker. The reference teaches lumber that is made from compositions comprising polyethylene terephthalate (PET) and styrene-butadiene rubber (SBR). Recovered material can be used as the PET and SBR. See col. 3, lines 1-5 and Examples I-IV. It is not clear how the PET and SBR of the reference would differ from PET and SBR obtained from recycled bottles and recycled tires or it would have been obvious to use recovered PET and SBR obtained from recycled bottles and recycled tires as suggested by the reference.

Claims 1-5, 9, 18 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lee. The reference teaches a train rail support member made from a composition comprising recycled tires and recycled PET bottles.

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See col. 3, lines 19-39. As styrene-butadiene, polybutadiene, polyisoprene, natural rubber and ethylene-propylene-diene (EPDM) are all conventional rubbers used to make tires, the recycled tire material of the reference inherently has one or more of these rubbers or it would have been obvious to use recycled tires made from one or more of these rubbers as the recycled tire material in the compositions of the reference.

Claims 10-12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee. The reference is discussed above. Additionally, the PET viscosity and rubber density are conventional properties of PET and rubber. Thus, it would have been obvious to use recycled PET and recycled tires having the required viscosity and density in the compositions of the reference.

Claims 1-5, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bredael. The reference teaches compositions comprising recycled butadiene-styrene elastomer, recycled polyethylene terephthalate and a polyolefin that can be ethylene-propylene diene copolymer. See col. 4, lines 7-24. Use of a combination of butadiene-styrene elastomer and ethylene-propylene copolymer is anticipated by or would have been obvious over the reference. It is not clear how the ethylene-propylene copolymer of the reference would differ from recycled ethylene-propylene copolymer.

Claims 1-5, 9, 18 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Segrest. The reference teaches compositions comprising recycled rubber and recycled PET bottles. See Example 1. As styrene-butadiene, polybutadiene, polyisoprene, natural rubber and ethylene-propylene-diene (EPDM) are all conventional rubbers used to make tires, the recycled tire material of the reference inherently has

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one or more of these rubbers or it would have been obvious to use recycled tires made from one or more of these rubbers as the recycled tire material in the compositions of the reference.

Claims 10-12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Segrest. The reference is discussed above. Additionally, the PET viscosity and rubber density are conventional properties of PET and rubber. Thus, it would have been obvious to use recycled PET and recycled tires having the required viscosity and density in the compositions of the reference.

Claims 1-5, 9, 18 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Banerjie. The reference teaches lumber made from compositions comprising recycled tires, recycled polyethylene terephthalate, EPDM and a blowing agent. See examples. As styrene-butadiene, polybutadiene, polyisoprene, natural rubber and ethylene-propylene-diene (EPDM) are all conventional rubbers used to make tires, the recycled tire material of the reference inherently has one or more of these rubbers or it would have been obvious to use recycled tires made from one or more of these rubbers as the recycled tire material in the compositions of the reference.

Claims 10, 13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banerjie. The reference is discussed above. Additionally, the PET viscosity is conventional and foaming agents are taught at col. 3, lines 54-60. Thus, it would have been obvious to use recycled polyethylene terephthalate having the required viscosity and a conventional foaming agent in the compositions of the reference.

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August 8, 2002

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